

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM D

NOTICE OF SALE OF SECURITIES
PURSUANT TO REGULATION D,
SECTION 4(6), AND/OR
UNIFORM LIMITED OFFERING EXEMPTION

OMB APPROVAL

OMB Number 3235-0076
Expires November 30, 2001
Estimated average burden
hours per response 16.00



06040058

Name of Offering (☐ check if this is an amendment and name has changed, and indicate change.)
Issuance of Common Stock in connection with Plan of Reorganization of Gardenburger, Inc.

Filing Under (Check box(es) that apply: ☒ Rule 504 ☐ Rule 505 ☐ Rule 506 ☐ Section 4(6) ☐ ULOE
Type of Filing: ☒ New Filing ☐ Amendment

A. BASIC IDENTIFICATION DATA

1. Enter the information requested about the issuer

Name of Issuer (☐ check if this is an amendment and name has changed, and indicate change.)

Wholesome & Hearty Foods Company, a Delaware corporation, formerly known as Gardenburger, Inc., an Oregon corporation

Address of Executive Offices (Number and Street, City, State, Zip Code)
15615 Alton Parkway, Suite 350, Irvine, California 92618Telephone Number (Including Area Code:
(949) 255-2000Address of Executive Offices (Number and Street, City, State, Zip Code)
(if different from Executive Offices)

Telephone Number (Including Area Code:

Brief Description of Business

Issuer is one of the leading producers and marketers of meat alternative products. The Gardenburger® product line is a national brand in the retail grocery, food service, club store and natural foods channels of distribution and features core burger offerings (such as the Original Gardenburger® veggie burger), soy burgers (such as the Gardenburger Flame Grilled burger), innovative non-burger items (such as Gardenburger Riblets) and convenient new products (such as Gardenburger Meals and Wraps).

Type of Business Organization

☒ corporation ☐ limited partnership, already formed ☐ other (please specify):
☐ business trust ☐ limited partnership, to be formed

Actual or Estimated Date of Incorporation or Organization:

Month Year
0 3 0 6

☒ Actual☐ Estimated

Jurisdiction of Incorporation or Organization:

(Enter two-letter U.S. Postal Service abbreviation for State:
CN for Canada; FN for other foreign jurisdiction)

D E

GENERAL INSTRUCTIONS

Federal

Who Must File: All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

When to File: A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

Where to File: U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies Required: Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signatures.

Information Required: A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

Filing Fee: There is no federal filing fee.

State:

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

ATTENTION

Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1972 (2-99)

A. BASIC IDENTIFICATION DATA

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years.
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer.
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Robert E. Fowler, III

Business or Residence Address (Number and Street, City, State, Zip Code)

15615 Alton Parkway, Suite 350, Irvine, California 92618

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Scott C. Wallace

Business or Residence Address (Number and Street, City, State, Zip Code)

15615 Alton Parkway, Suite 350, Irvine, California 92618

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Robert Dixon

Business or Residence Address (Number and Street, City, State, Zip Code)

15615 Alton Parkway, Suite 350, Irvine, California 92618

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Melanie Flaherty

Business or Residence Address (Number and Street, City, State, Zip Code)

15615 Alton Parkway, Suite 350, Irvine, California 92618

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Richard Werblin

Business or Residence Address (Number and Street, City, State, Zip Code)

15615 Alton Parkway, Suite 350, Irvine, California 92618

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

David Samuelson

Business or Residence Address (Number and Street, City, State, Zip Code)

15615 Alton Parkway, Suite 350, Irvine, California 92618

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

B. INFORMATION ABOUT OFFERING

1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering?

Yes

☐

No

☒

Answer also in Appendix, Column 2, if filing under ULOE.

2. What is the minimum investment that will be accepted from any individual?

\$ N/A

3. Does the offering permit joint ownership of a single unit?

Yes

☐

No

☒

4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only

Full Name (Last name first, if individual)

None

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

N/A

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States)

☐ All States

| | | | | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|------|------|------|
| [AL] | [AK] | [AZ] | [AR] | [CA] | [CO] | [CT] | [DE] | [DC] | [FL] | [GA] | [HI] | [ID] |
| [IL] | [IN] | [IA] | [KS] | [KY] | [LA] | [ME] | [MD] | [MA] | [MI] | [MN] | [MS] | [MO] |
| [MT] | [NE] | [NV] | [NH] | [NJ] | [NM] | [NY] | [NC] | [ND] | [OH] | [OK] | [OR] | [PA] |
| [RI] | [SC] | [SD] | [TN] | [TX] | [UT] | [VT] | [VA] | [WA] | [WV] | [WI] | [WY] | [PR] |

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States)

☐ All States

| | | | | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|------|------|------|
| [AL] | [AK] | [AZ] | [AR] | [CA] | [CO] | [CT] | [DE] | [DC] | [FL] | [GA] | [HI] | [ID] |
| [IL] | [IN] | [IA] | [KS] | [KY] | [LA] | [ME] | [MD] | [MA] | [MI] | [MN] | [MS] | [MO] |
| [MT] | [NE] | [NV] | [NH] | [NJ] | [NM] | [NY] | [NC] | [ND] | [OH] | [OK] | [OR] | [PA] |
| [RI] | [SC] | [SD] | [TN] | [TX] | [UT] | [VT] | [VA] | [WA] | [WV] | [WI] | [WY] | [PR] |

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States)

☐ All States

| | | | | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|------|------|------|
| [AL] | [AK] | [AZ] | [AR] | [CA] | [CO] | [CT] | [DE] | [DC] | [FL] | [GA] | [HI] | [ID] |
| [IL] | [IN] | [IA] | [KS] | [KY] | [LA] | [ME] | [MD] | [MA] | [MI] | [MN] | [MS] | [MO] |
| [MT] | [NE] | [NV] | [NH] | [NJ] | [NM] | [NY] | [NC] | [ND] | [OH] | [OK] | [OR] | [PA] |
| [RI] | [SC] | [SD] | [TN] | [TX] | [UT] | [VT] | [VA] | [WA] | [WV] | [WI] | [WY] | [PR] |

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if answer is "none" or "zero." If the transaction is an exchange offering, check the box and indicate in the columns below the amounts of the securities offered for exchange and already exchanged. **(See attached statement concerning issuance).**

| Type of Security | Aggregate Offering Price | Amount Already Sold |
|---|-----------------------------|------------------------|
| Debt | \$ 0 | \$ 0 |
| Equity | \$ | \$ |
| <input type="checkbox"/> Common <input checked="" type="checkbox"/> Preferred | | |
| Convertible Securities (including warrants) | \$ 0 | \$ 0 |
| Partnership Interests | \$ 0 | \$ 0 |
| Other (specify _____) | \$ 0 | \$ 0 |
| Total | \$ | \$ |

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero." **(See attached statement concerning issuance).**

| | Number Investors | Aggregate Dollar Amount of Purchases |
|---|---------------------|--|
| Accredited Investors | 6 | \$ |
| Non-accredited Investors | 0 | \$ 0 |
| Total (for filings under Rule 504 only) | 6 | \$ 0 |

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, in the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C - Question 1.

| Type of offering | Type of Security | Dollar Amount Sold |
|--------------------|------------------|-----------------------|
| Rule 505 | | |
| Regulation A | | |
| Rule 504 | Common Stock | |
| Total | | |

4. a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the issuer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate. **(See attached statement concerning issuance).**

| | | |
|--|--------------------------|------|
| Transfer Agent's Fees | <input type="checkbox"/> | \$ 0 |
| Printing and Engraving Costs | <input type="checkbox"/> | \$ 0 |
| Legal Fees | <input type="checkbox"/> | \$ 0 |
| Accounting Fees | <input type="checkbox"/> | \$ 0 |
| Engineering Fees | <input type="checkbox"/> | \$ 0 |
| Sales Commissions (specify finders' fees separately) | <input type="checkbox"/> | \$ 0 |
| Other Expenses (identify) | <input type="checkbox"/> | \$ 0 |
| Total | <input type="checkbox"/> | \$ 0 |

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

b. Enter the difference between the aggregate offering price given in response to Part C – Question 1 and total expenses furnished in response to Part C – Question 4.a. This difference is the “adjusted gross proceeds to the issuer.” (See attached statement concerning issuance).

N/A

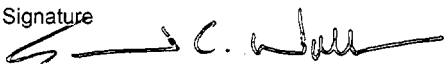
5. Indicate below the amount of the adjusted gross proceeds to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C – Question 4.b above. (See attached statement concerning issuance).

N/A

| | | Payments to Officers, Directors & Affiliates | | Payments to Others |
|--|--------------------------|---|--------------------------|-----------------------|
| Salaries and fees | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ 0 |
| Purchase of real estate | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ 0 |
| Purchase, rental or leasing and installation of machinery and equipment | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ 0 |
| Construction or leasing of plant buildings and facilities | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ 0 |
| Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger) | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ 0 |
| Repayment of indebtedness | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ 0 |
| Working Capital | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ |
| Other (specify): | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ 0 |
| Column Totals | <input type="checkbox"/> | \$ 0 | <input type="checkbox"/> | \$ |
| Total Payments Listed (column totals added) | | | <input type="checkbox"/> | \$ 0 |

D. FEDERAL SIGNATURES

The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

| | | |
|--|---|----------------|
| Issuer (Print or Type) Wholesome & Hearty Foods Company | Signature  | Date 6/5/06 |
| Name of Signer (Print or Type) Scott C. Wallace | Title of Signer (Print or Type) President/CEO | |

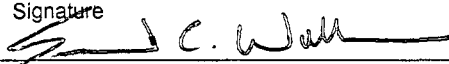
ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.).

E. STATE SIGNATURE

1. Is any party described in 17 CFR 230.262 presently subject to any of the disqualification provisions of such rule? Yes ☐ No ☐ N/A
See Appendix, Column 5, for state response.
2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed, a notice on Form D (17 CFR 239.500) at such times as required by state law. N/A
3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to offerees. N/A
4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform Limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied. N/A

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

| | | |
|--|--|----------------|
| Issuer (Print or Type) Wholesome & Hearty Foods Company | Signature  | Date 6/5/06 |
| Name of Signer (Print or Type) Scott C. Wallace | Title of Signer (Print or Type) President/CEO | |

Instruction:

Print the name and title of the signing representative under his signature for the state portion of this form. One copy of every notice on Form D must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear typed or printed signature.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM D

SUPPLEMENTAL DISCLOSURE TO FILING BY
WHOLESOME & HEARTY FOODS COMPANY, A DELAWARE CORPORATION

Gardenburger, Inc., an Oregon corporation, filed a petition (*In re: Gardenburger, Inc.*, as Debtor) under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), and commenced a Chapter 11 case (Case No. SA 05-19539) in the Central District of California, Santa Ana Division (the "Bankruptcy Court"). The Bankruptcy Court issued that certain Order Confirming Debtor's Plan of Reorganization (the "Plan of Reorganization"), a copy of which is attached hereto.

The Bankruptcy Court approved that certain Plan of Reorganization, pursuant to which (1) Debtor shall reincorporate in Delaware as "Wholesome & Hearty Foods Company, a Delaware corporation" ("Issuer"), (2) the Bankruptcy Court shall cancel all of the outstanding equity of Debtor, (3) Issuer shall issue, in exchange for the existing claims and interests held by Annex Holdings I, LP in the Debtor, preferred stock and common stock ("Common Stock") of Issuer, which issuance is exempt from registration under Section 5 of the Securities Act of 1933 by reason of Section 1145 of the Bankruptcy Code, and (4) in connection with the Management Equity Plan (as defined in the Plan of Reorganization), Issuer shall issue the following shares of Common Stock to those members of senior management of Issuer listed below:

| <u>Recipient of Common Stock</u> | <u>Shares</u> | <u>% of Outstanding Shares</u> |
|----------------------------------|---------------|--------------------------------|
| Robert E. Fowler, III | 1,200 | 2.00% |
| Scott C. Wallace | 3,900 | 6.50% |
| Robert Dixon | 1,050 | 1.75% |
| Melanie Flaherty | 600 | 1.00% |
| Richard Werblin | 600 | 1.00% |
| David Samuelson | 600 | 1.00% |
| | | 13.25% |

Based on a preliminary valuation provided to Issuer in connection with the Plan of Reorganization, the fair market value of 1% interest in the Common Stock of issuer is \$6,000. As a result, the fair market value of the entire issuance hereunder is less than \$79,500.00.

The contemplated issuance hereunder was made pursuant to the Plan of Reorganization in connection with the Bankruptcy Case, and did not involve the exchange of monies or other consideration from the recipients to Issuer. The shares representing the stock issued pursuant to the Plan of Reorganization were issued to recipients on June 5, 2006.

ORIGINAL

David S. Kupetz (CA Bar No. 125062)
Email: dkupetz@sulmeyerlaw.com
Mark S. Horoupian (CA Bar No. 175373)
Email: mhoroupian@sulmeyerlaw.com
SulmeyerKupetz
A Professional Corporation
333 South Hope Street, Thirty-Fifth Floor
Los Angeles, California 90071-1406
Telephone: 213.626.2311
Facsimile: 213.629.4520

Bankruptcy Counsel for Gardenburger, Inc.,
Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

In re

**GARDENBURGER, INC., an Oregon
corporation, dba GARDENBURGER
AUTHENTIC FOODS COMPANY,**

Debtor.

Tax Id # 93-0886359

Case No. SA 05-19539-JB

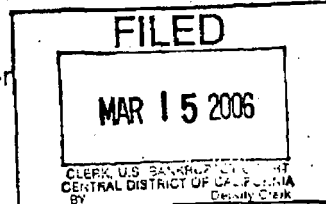
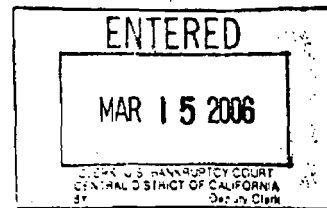
Chapter 11

**ORDER CONFIRMING DEBTOR'S PLAN
OF REORGANIZATION**

DATE: March 15, 2006
TIME: 11:00 a.m.
PLACE: Ronald Reagan Federal Building
and United States Courthouse
Courtroom 5B
411 West Fourth Street
Santa Ana, California

The Debtor's Plan of Reorganization (the "Plan")¹ filed by Gardenburger, Inc. (the "Debtor"), on February 2, 2006, in accordance with chapter 11 of the Bankruptcy Code, has been properly transmitted to creditors and equity security holders. The Court has considered the Plan, the Debtor's Confirmation Hearing Memorandum filed on March 8, 2006 (the "Confirmation Memorandum") and the exhibits thereto, the Declaration of Scott C. Wallace submitted in support of the Confirmation Memorandum,

¹ Capitalized terms in this Order not defined herein shall be defined as set forth in the Plan.



1 the Declaration of Robert G. Kennedy in support of the Confirmation Memorandum, the
2 Debtor's Disclosure Statement (the "Disclosure Statement") and other pleadings and
3 documents on file with this Court relating to the Plan, the Appendix of New Corporate
4 Documents filed on March 8, 2006, in connection with the hearing on confirmation of the
5 Plan, the representations of counsel made at the hearing on confirmation of the Plan, and
6 the facts and circumstances of this case. The Court has determined, after hearing on
7 proper and appropriate notice, that the requirements for confirmation of the Plan set forth
8 in 11 U.S.C. § 1129 have been satisfied and that the Court shall issue findings of fact and
9 conclusions of law in connection therewith. Based on the foregoing and good cause
10 appearing therefor,

11 **IT IS ORDERED** as follows:

- 12 1. The Plan is confirmed and all terms and provisions set forth therein
13 are hereby approved;
- 14 2. A true and correct copy of the Plan is attached hereto as Exhibit 1;
- 15 3. The Debtor and the Reorganized Debtor, as the case may be, are
16 hereby authorized to: (a) enter into the Exit Financing facilities; and (b) take all other
17 actions necessary or appropriate to enter into, implement and consummate the contracts,
18 instruments, releases, leases and other agreements or documents created in connection
19 with the Plan and all of the transactions contemplated thereby;
- 20 4. The Exit Financing Documentation and the terms and provisions
21 contained therein are hereby approved and the Amended and Restated Credit and
22 Security Agreement (the "Agreements") with respect to the WFBC Exit Financing Credit
23 Facilities and the GB Exit Credit Facility shall substantially be in the form of Exhibits 5
24 (WFBC agreement) and 6 (GB agreement), respectively, to the Confirmation
25 Memorandum, and the Agreements are hereby approved;
- 26 5. Notwithstanding anything to the contrary contained in this Order or
27 the Plan, the Post-Petition Credit Facilities, and the DIP Financing Order, all of the
28 claims, rights, obligations, liens, priorities, provisions and protections in favor of the

1 Secured Lenders arising in connection therewith or related thereto shall extend and
2 continue in full force and effect through the Effective Date;

3 6. Upon Confirmation of the Plan, the Reorganized Debtor is authorized
4 and directed, and the Secured Lenders are authorized, to make all filings and recordings,
5 necessary to establish and perfect the liens and security interests granted under the Exit
6 Financing facilities pursuant to applicable provisions of state, Federal or other law
7 (whether domestic or foreign);

8 7. The Reorganized Debtor shall cooperate with the Secured Lenders
9 to make all filings and recordings necessary or appropriate under applicable law to
10 (i) continue or maintain the perfection of such liens, and (ii) give notice of such liens and
11 security interests to third parties (the "Perfection Documents"), and this Order shall
12 authorize each of the respective state filing offices to accept the Perfection Documents
13 for filing;

14 8. On the Confirmation Date, the Reorganized Debtor shall be revested
15 with all property that was formerly Property of the Estate free and clear of all Liens,
16 Claims and interests, except for (i) any and all security interests and Liens granted to
17 WFBC and GB pursuant to the DIP Financing Order (which shall remain effective through
18 the Effective Date), (ii) the security interests and Liens of the Exit Financing facilities
19 (which shall attach and become effective on the Effective Date), (iii) other permitted Liens
20 under the Post-Petition Credit Facilities and (iv) obligations arising under and specifically
21 set forth in the Plan;

22 9. While the Debtor shall be Reincorporated pursuant to the Plan and
23 the Reorganized Debtor shall be known as Wholesome & Hearty Foods Company, the
24 case name and caption in the Debtor's chapter 11 case shall not change; and

25 10. As set forth in Section 10.23 of the Plan and in accordance with
26 Local Bankruptcy Rule 3020-1, within 120 days following the Confirmation Date, the
27 Reorganized Debtor shall file an implementation report with the Clerk of the Court setting
28 forth the status of implementation of the Plan. The initial report shall be served on the

1 United States Trustee, the Debtor's 20 largest unsecured creditors, WFBC, GB, Millard,
2 AmeriCold, and any other parties who have requested special notice. Further reports
3 shall be filed every 120 days thereafter through the closing of the Case and served on the
4 same entities, unless otherwise ordered by the Court. Upon Substantial Consummation
5 of the Plan or as soon thereafter as all matters in the Case have been resolved, the
6 Reorganized Debtor shall file a motion with the Clerk of the Court requesting the entry of
7 a final decree closing the Case.

8 DATED:

9 MAR 15 2006

10 
11 HON. JAMES N. BARR
12 UNITED STATES BANKRUPTCY JUDGE

13 Presented by:

14 **SulmeyerKupetz**
15 A Professional Corporation

16 By: 

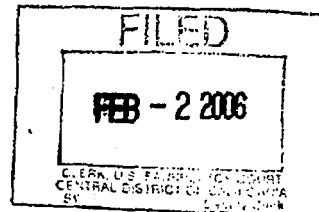
17 David S. Kupetz

18 Bankruptcy Counsel for Gardenburger, Inc.,
19 Debtor and Debtor in Possession
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SulmeyerKupetz, A Professional Corporation
333 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1406
TEL 213 626 2311 • FAX 213 629 4520

EXHIBIT 1

1 David S. Kupetz (CA Bar No. 125062)
Email: dkupetz@sulmeyerlaw.com
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6
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Debtor and Debtor in Possession

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

10
11 In re
12 GARDENBURGER, INC., an Oregon
corporation, dba GARDENBURGER
13 AUTHENTIC FOODS COMPANY,

14 Debtor.

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17 Tax Id # 93-0886359
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Case No. SA 05-19539-JB

Chapter 11

DEBTOR'S PLAN OF REORGANIZATION

DATE: March 15, 2006
TIME: 11:00 a.m.
PLACE: Ronald Reagan Federal Building
and United States Courthouse
Courtroom 5B
411 West Fourth Street
Santa Ana, CA 92701-4593

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1 Gardenburger, Inc., debtor and debtor in possession, proposes the
2 following plan of reorganization pursuant to chapter 11 of the Bankruptcy Code:

3 I.

4 DEFINITIONS

5 For the purposes of this Plan, the following terms shall have the meanings
6 specified below. Any term used in the Plan that is not defined herein, but that is defined
7 in the Code or the Bankruptcy Rules shall have the meaning assigned to that term in the
8 Bankruptcy Code or the Bankruptcy Rules.

9 1.1 "Administrative Claim" means any Claim, including but not limited to
10 claims for compensation of professionals made pursuant to section 330 of the Code,
11 entitled to priority treatment under section 507(a)(1) of the Code.

12 1.2 "Allowed Administrative Claim" means an Administrative Claim that is
13 an Allowed Claim.

14 1.3 "Allowed Claim" means any Claim in the amount and classification
15 set forth in a proof of claim filed with the Court within the time fixed by the Court, or in the
16 absence of such filing, as set forth in the Debtor's schedules of liabilities filed in the Case,
17 unless the Claim was listed in the schedules as disputed, contingent or unliquidated, in
18 any event as to which no objection to the allowance thereof has been interposed within
19 the applicable period fixed in the Plan or the Confirmation Order, or as to which any such
20 objection has been determined by an order of the Court providing for allowance. Multiple
21 proofs of claim of the same Class filed by a Creditor shall be aggregated and shall
22 constitute a single Claim. The allowance of Administrative Claims shall be governed by
23 the applicable provisions of the Code.

24 1.4 "Allowed General Unsecured Claim" means a General Unsecured
25 Claim that is an Allowed Claim.

26 1.5 "Allowed Priority Claim" means a Priority Claim that is an Allowed
27 Claim.

1 1.6 "Allowed Secured Claim" means a Secured Claim that is an Allowed
2 Claim.

3 1.7 "Allowed Tax Claim" means a Tax Claim that is an Allowed Claim.

4 1.8 "AmeriCold" means AmeriCold Logistics, LLC.

5 1.9 "Annex Holdings" means Annex Holdings I LP, the current holder of
6 the Convertible Note.

7 1.10 "Appendix of New Corporate Documents" means the compilation of
8 documents containing the Bylaws, Certificate of Incorporation, Shareholder Agreement,
9 Employment Agreements, and Consulting Agreement filed with the Court as an appendix
10 in connection with the Plan.

11 1.11 "Bankruptcy Rules" means the Federal Rules of Bankruptcy
12 Procedure and any amendments thereof.

13 1.12 "Bar Date" means February 16, 2006, the last day for filing proofs of
14 claim against the Debtor as fixed by order of the Court. Notwithstanding the foregoing, in
15 the event that a Creditor asserts that it did not receive notice of the Bar Date and the
16 Debtor agrees with such an assertion and/or the Court determines that the Creditor did
17 not have appropriate notice, and the Creditor receives notice of the hearing on
18 Confirmation of the Plan, in order for the Creditor to preserve any right to assert a Claim
19 against the Debtor or the Estate, the Creditor must file a proof of claim with the Court and
20 serve a copy of said proof of claim on bankruptcy counsel for the Debtor no later than
21 thirty (30) days following the Confirmation Date.

22 1.13 "Business Day" means any day which is not a Saturday, a Sunday,
23 or a "legal holiday," as defined in Bankruptcy Rule 9006(a).

24 1.14 "Bylaws" means the Reorganized Debtor's amended and restated
25 bylaws which shall become effective on the Effective Date of the Plan. The Bylaws are
26 included in the Appendix of New Corporate Documents filed with the Court in connection
27 with the Plan.
28

1 1.15 "CapitalSource" means CapitalSource Finance LLC, as agent and
2 lender, the holder of a prepetition secured claim against the Debtor.

3 1.16 "Case" means the chapter 11 bankruptcy reorganization case of the
4 Debtor, designated as Case No. SA 05-19539-JB, pending before the Court.

5 1.17 "Certificate of Incorporation" means the Reorganized Debtor's
6 certificate of incorporation which shall become effective on the Effective Date of the Plan.
7 The Certificate of Incorporation is included in the Appendix of New Corporate Documents
8 filed with the Court in connection with the Plan.

9 1.18 "CFO Payment Calculation" means the product of: (i) amount equal
10 to \$204,000; multiplied by (ii) the quotient of: (A) 211 (this is the number of days from
11 January 27, 2005 to August 26, 2005); divided by (B) the number of days commencing on
12 January 27, 2005, and ending on the Effective Date.

13 1.19 "Claim" means any right to payment, whether or not such right is
14 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,
15 disputed, undisputed, legal, equitable, secured or unsecured, as defined in section 101(5)
16 of the Code.

17 1.20 "Class" means a grouping of Claims or Interests as designated in
18 Section V of the Plan.

19 1.21 "Code" means the Bankruptcy Code, 11 U.S.C. § 101 et seq., and
20 any amendments thereof that are applicable in the Case.

21 1.22 "Committee" means the official committee of unsecured creditors
22 appointed in the Case.

23 1.23 "Common Shareholders" means the holders of Common Stock of the
24 Debtor.

25 1.24 "Common Stock" means the Debtor's common stock and any
26 warrant or right to purchase, sell or subscribe to Common Stock.

27 1.25 "Confirmation" means the entry of an order by the Court confirming
28 the Plan at or after hearing pursuant to section 1129 of the Code.

1 1.26 "Confirmation Date" means the date of entry of an order of the Court
2 confirming the Plan.

3 1.27 "Confirmation Hearing" means the hearing(s) conducted by the Court
4 with regard to Confirmation of the Plan.

5 1.28 "Confirmation Order" means the order of the Court confirming
6 (approving) the Plan.

7 1.29 "Consulting Agreement" means the consulting agreement between
8 the Reorganized Debtor and Robert E. Fowler, III, which goes into effect upon the
9 Effective Date of the Plan. The Consulting Agreement is included in the Appendix of New
10 Corporate Documents filed with the Court in connection with the Plan.

11 1.30 "Convertible Note" means the Convertible Senior Subordinated
12 Note, executed by the Debtor, as amended, currently held by Annex Holdings.

13 1.31 "Court" means the United States Bankruptcy Court for the Central
14 District of California, Santa Ana Division, before which the Case is pending or, in the
15 event such court ceases to exercise jurisdiction over the Case, such court or adjunct or
16 unit thereof that exercises jurisdiction over the Case in lieu of the United States
17 Bankruptcy Court for the Central District of California, Santa Ana Division.

18 1.32 "Cramdown" means the Court's Confirmation of the Plan when an
19 Impaired Class fails to accept the Plan.

20 1.33 "Creditor" means an entity with a Claim against the Debtor or the
21 Estate.

22 1.34 "Cure Amount" means the amount to be paid by the Reorganized
23 Debtor with respect to the assumption of an executory contract or unexpired lease
24 pursuant to the Plan and in accordance with section 365 of the Code. The Cure Amount
25 may be less than the amount required under section 365 of the Code if the non-Debtor
26 party to the executory contract or unexpired lease consents to payment of a lesser
27 amount.

28 1.35 "Debt" means liability on a Claim.

1 1.36 "Debtor" means Gardenburger, Inc., an Oregon corporation.

2 1.37 "DIP Financing Order" means the Final Order of the Court approving
3 the Post-Petition Credit Facilities entered on November 16, 2005.

4 1.38 "Disbursing Agent" means the Reorganized Debtor.

5 1.39 "Disclosure Statement" means the Debtor's Disclosure Statement as
6 approved by order of the Court entered on January 19, 2006, and as amended thereafter.

7 1.40 "Disputed Claims" means Claims against the Debtor or the Estate as
8 to which an objection has been filed no later than ninety (90) days after the Effective Date
9 (or such later date as may be fixed by the Court) and which objection has not been
10 withdrawn or resolved by the entry of a Final Order.

11 1.41 "Distribution(s)" means the property (including payments) required by
12 the Plan to be provided to the holders of Allowed Claims.

13 1.42 "Effective Date" means the first Business Day date fifteen (15) days
14 following the Confirmation Date.

15 1.43 "Employment Agreement(s)" means the employment agreements
16 with each of the members of Key Management which go into effect upon the Effective
17 Date of the Plan. The Employment Agreements are included in the Appendix of New
18 Corporate Documents filed with the Court in connection with the Plan.

19 1.44 "Estate" means the bankruptcy estate created upon commencement
20 of the Case pursuant to section 541(a) of the Code.

21 1.45 "Equity Holder" or "Equity Interest Holder" means the holder of an
22 Equity Interest (Preferred Stock or Common Stock) in the Debtor.

23 1.46 "Equity Interest" means an equity security interest (Common Stock or
24 Preferred Stock) in the Debtor and any warrant or right to purchase, sell or subscribe to
25 an Equity Interest.

26 1.47 "Equity Interest Related Claim" means any Claim against the Debtor
27 arising from the purchase or sale of an Equity Interest in the Debtor, or any claim against
28 the Debtor by an entity that asserts equitable or contractual rights of reimbursement,

1 contribution or indemnification arising from such Claim. Equity Interest Related Claims
2 are limited to Claims that are subordinated under section 510(b) of the Code.

3 1.48 "Exit Financing" means the Post-Petition Credit Facilities, as
4 amended and restated or otherwise modified pursuant to the Exit Financing
5 Documentation and any other agreement(s) between the Debtor and the Secured
6 Lenders and approved by the Confirmation Order, on and following the Effective Date of
7 the Plan. The Exit Financing shall be used by the Reorganized Debtor to, among other
8 things, (i) pay in full obligations under the Post-Petition Credit Facilities, (ii) fund its
9 operations and working capital requirements, (iii) pay Allowed Administrative Claims, and
10 (iv) meet other obligations under the Plan.

11 1.49 "Exit Financing Documentation" means (i) with respect to GB,
12 definitive documentation with respect to the GB Exit Credit Facility consistent with the GB
13 Exit Financing Commitment Letter and the GB Proposal Letter and otherwise satisfactory
14 to GB, and (ii) with respect to WFBC, definitive documentation with respect to the WFBC
15 Exit Financing Credit Facilities consistent with the WFBC Exit Financing Commitment
16 Letter and the WFBC Proposal Letter and otherwise satisfactory to WFBC. The Exit
17 Financing Documentation shall take the form of amended and restated loan
18 documentation with respect to the Post-Petition Credit Facilities.

19 1.50 "Final Order" means an order of the Court that has been entered and
20 either:

21 1.50.1 The time for appeal from such entered order has expired
22 with no appeal having been filed timely; or

23 1.50.2 Any appeal that had been filed timely has been dismissed
24 or otherwise finally determined.

25 1.51 "Gardenburger" means the Debtor, Gardenburger, Inc., an Oregon
26 corporation.

1 1.52 "General Unsecured Claims" means all Unsecured Claims against
2 the Debtor, except for Administrative Claims and Tax Claims (if any) and except for
3 Claims that are included in Class 1 or Class 3 under the Plan.

4 1.53 "General Unsecured Creditors" means the holders of General
5 Unsecured Claims.

6 1.54 "GB" means GB Retail Funding, LLC, the provider of the GB DIP
7 Term Loan to the Debtor and, subject to the satisfaction of the GB Exit Financing
8 Conditions Precedent, the provider of the GB Exit Credit Facility to the Reorganized
9 Debtor.

10 1.55 "GB DIP Term Loan" means the single-advance term loan extended
11 to the Debtor by GB and approved by the Court pursuant to a Final Order entered on
12 November 16, 2005.

13 1.56 "GB Exit Credit Facility" means the credit facility to be provided by
14 GB to the Reorganized Debtor upon the Effective Date of the Plan and subject to
15 satisfaction of the GB Exit Financing Conditions Precedent, including execution and
16 delivery of the Exit Financing Documentation. The terms of the GB Exit Credit Facility
17 shall be substantially similar to the GB DIP Term Loan as modified by the GB Exit
18 Financing Commitment Letter.

19 1.57 "GB Exit Financing Commitment Letter" means the agreement
20 between the Debtor and GB entered in connection with the closing of the GB DIP Term
21 Loan setting forth the terms and conditions of the GB Exit Credit Facility. The GB Exit
22 Financing Commitment Letter is attached as Exhibit 5 to the Disclosure Statement.

23 1.58 "GB Exit Financing Conditions Precedent" are as follows:

24 1.58.1 The simultaneous closing of the WFBC Exit
25 Financing Credit Facilities to refinance the WFBC DIP Credit Facilities, which exit
26 financing shall be on terms acceptable to GB in its reasonable discretion;

27 1.58.2 Satisfaction of each of the terms and conditions set
28 forth in the GB Exit Financing Commitment Letter;

1 1.58.3 Filing of a UCC-1 financing statement on behalf of
2 GB at the office of the Delaware Secretary of State in connection with the
3 Reorganized Debtor's reincorporation in the State of Delaware;

4 1.58.4 Under the WFBC Exit Financing Credit Facilities, the
5 Reorganized Debtor shall have minimum availability on the funding date of the
6 WFBC Revolving Exit Credit Facility of \$2,000,000 after (i) rolling over the
7 outstanding line of credit balance from the WFBC Revolving DIP Credit Facility, (ii)
8 reserving for all applicable availability reserves, (iii) reserving for any trade
9 payables that are thirty (30) days past their due date in the ordinary course of
10 business, (iv) paying all Court approved Administrative Claims including but not
11 limited to any accrued and unpaid Administrative Claims or Priority Claims which
12 are to be paid cash on the Effective Date, or, if disputed, unliquidated, or
13 contingent, when allowed, and (v) paying all Court approved professional fees;

14 1.58.5 Satisfaction of each of the terms and conditions set
15 forth in the GB Proposal Letter (as amended by the GB Exit Financing
16 Commitment Letter);

17 1.58.6 The negotiation, execution, and delivery of definitive
18 documentation with respect to the GB Exit Credit Facility consistent with the GB
19 Exit Financing Commitment Letter and the GB Proposal Letter and otherwise
20 satisfactory to GB, in its sole discretion;

21 1.58.7 GB's timely receipt, at least thirty (30) days prior to
22 the scheduled hearing on the confirmation of the Plan, and review and approval, in
23 GB's sole discretion, of balance sheet, income statement, and cash flow
24 statement projections for the Reorganized Debtor's operations for the initial twelve
25 (12) months after the Effective Date of the Plan, prepared on a monthly basis and
26 including an availability roll-forward. GB will utilize these projections to establish,
27 in its discretion, the financial covenants for initial twelve months of the GB Exit
28 Credit Facility;

1.58.8 That there shall not have occurred, in the reasonable opinion of GB, any material adverse change in the business, assets, liabilities (actual or contingent), operations, financial condition or prospects of the Debtor; and

1.58.9 That (i) all written information, other than Projections (as defined below), which has been or is hereafter made available to GB by the Debtor or any of its representatives in connection with the transactions contemplated hereby (the "Information") is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which the Information was provided and (ii) all financial projections concerning the Debtor or the Reorganized Debtor that have been or are hereafter made available to GB by the Debtor or any of its representatives (the "Projections") have been prepared in good faith based upon reasonable assumptions.

1.59 "GB Proposal Letter" means the proposal letter dated September 1, 2005, with respect to the GB DIP Term Loan and the GB Exit Credit Facility, attached as Exhibit 3 to the Disclosure Statement.

1.60 "Impaired" shall have the meaning provided in section 1124 of the Code.

1.61 "Key Management" means Scott C. Wallace, Robert Dixon, Melanie Flaherty, Richard D. Werblin and David W. Samuelson, and such other individuals, if any, who may be designated as such by the Debtor in notice(s) filed with the Court prior to the Confirmation Hearing.

1.62 "Lien" has the meaning provided by section 101(37) of the Code.

1.63 "Management Equity Plan" means the plan under which the members of Key Management shall receive New Common Stock as of the Effective Date

1 of the Plan. The terms of the Management Equity Plan are set forth in the Plan and the
2 Shareholder Agreement.

3 1.64 "Maturity Date" means November 22, 2008, the date on which the
4 Exit Financing matures and all obligations thereunder become due and owing.

5 1.65 "Millard" means Millard Refrigerated Services, Inc.

6 1.66 "New Equity Holder(s)" means the Persons to whom the New Equity
7 Interests will be issued pursuant to the Plan. The New Equity Holders are Annex
8 Holdings, Robert E. Fowler, III, Scott C. Wallace, Robert Dixon, Melanie Flaherty,
9 Richard D. Werblin and David W. Samuelson, and any other Persons designated as Key
10 Management pursuant to the Plan.

11 1.67 "New Common Stock" means the common stock in Reorganized
12 Gardenburger to be issued pursuant to the Plan.

13 1.68 "New Corporate Documents" means the Certificate of Incorporation,
14 Bylaws, Shareholder Agreement, Employment Agreements and Consulting Agreement.
15 The New Corporate Documents are contained in the Appendix of New Corporate
16 Documents filed with the Court in connection with the Plan.

17 1.69 "New Equity" or "New Equity Interests" means the New Preferred
18 Stock and the New Common Stock in Reorganized Gardenburger to be issued pursuant
19 to the Plan.

20 1.70 "New Equity Holders" means the Persons to whom New Common
21 Stock and/or New Preferred Stock will be issued pursuant to the Plan.

22 1.71 "New Preferred Stock" means the Series A Preferred Stock in the
23 Reorganized Debtor to be issued pursuant to the Plan.

24 1.72 "Person" means any individual, corporation, general partnership,
25 limited partnership, limited liability company, association, joint stock company, joint
26 venture, estate, trust, government or political subdivision, governmental unit, official
27 committee appointed by the United States Trustee, unofficial committee of creditors, or
28 any other entity.

1 1.73 "Petition Date" means October 14, 2005, the date on which the
2 Debtor filed its chapter 11 petition with the Clerk of the Court.

3 1.74 "Plan" means this Debtor's Plan of Reorganization in its present form
4 or as it may be amended, modified or supplemented.

5 1.75 "Post-Petition Credit Facilities" means the WFBC DIP Credit
6 Facilities and the GB DIP Term Loan approved by the Court pursuant to a Final Order
7 entered on November 16, 2005.

8 1.76 "Preferred Shareholders" means the holders of Preferred Stock in
9 the Debtor.

10 1.77 "Preferred Stock" means the Debtor's issued and outstanding Series
11 C Convertible Preferred Stock and Series D Convertible Preferred Stock and any warrant
12 or right to purchase, sell or subscribe to Preferred Stock.

13 1.78 "Priority Claim" means any claim entitled to priority treatment
14 pursuant to section 507 of the Code, except for Administrative Claims and Tax Claims.

15 1.79 "Property of the Estate" has the meaning provided by section 541 of
16 the Code.

17 1.80 "Reincorporated" means a corporate reorganization done for the
18 purpose of changing the state of incorporation of the Debtor, pursuant to which the
19 Debtor, organized under the laws of the State of Oregon, establishes a new corporation
20 organized under the laws of the State of Delaware, and the Debtor is then merged into
21 the new corporation under the applicable merger statutes of the states concerned, with
22 the surviving corporation being the new corporation under the laws of the State of
23 Delaware and having the corporate name Wholesome & Hearty Foods Company.

24 1.81 "Reorganized Debtor" means the Debtor on and following the
25 Confirmation Date. The Reorganized Debtor shall be Reincorporated. The corporate
26 name of the Reorganized Debtor shall be changed to Wholesome & Hearty Foods
27 Company.

28 1.82 "Reorganized Gardenburger" means the Reorganized Debtor.

1 1.83 "Secured Claim" means a Claim that is secured by a Lien on
2 Property of the Estate.

3 1.84 "Secured Creditor" means an entity with a Secured Claim against the
4 Debtor.

5 1.85 "Secured Lenders" means WFBC and GB.

6 1.86 "Shareholder Agreement" means the Reorganized Debtor's
7 Shareholder Agreement which shall become effective on the Effective Date of the Plan.
8 The Shareholder Agreement is included in the Appendix of New Corporate Documents
9 filed with the Court in connection with the Plan.

10 1.87 "Substantial Consummation" has the meaning provided in section
11 1101(2) of the Code.

12 1.88 "Tax Claim" means a Claim entitled to priority treatment pursuant to
13 section 507(a)(8) of the Code.

14 1.89 "Unclaimed Property" means any Distributions which are unclaimed
15 180 days following the date of distribution. Unclaimed Property shall include (a) checks
16 (and the funds represented thereby) which have been returned as undeliverable without a
17 proper forwarding address, (b) funds for checks which have not been paid, (c) checks
18 (and the funds represented thereby) which were not mailed or delivered because of the
19 absence of a proper address with which to mail or deliver such property, and (d) interest
20 on cash constituting Unclaimed Property.

21 1.90 "Unimpaired" means that the Class is treated under the Plan in
22 accordance with section 1124(1) of the Code.

23 1.91 "Unsecured Claim" means a Claim that is not secured by any Lien on
24 Property of the Debtor or Property of the Estate.

25 1.92 "Warehouseman Agreements" means the agreements (including
26 exhibits thereto) between the Debtor and Millard and the Debtor and AmeriCold,
27 respectively, approved by the Court in the Case pursuant to orders entered on November
28 16, 2005, and attached as Exhibits 15 and 16 to the Disclosure Statement, and the

1 "Acknowledgement of Security Interest and Waiver of Liens (Warehouse)" agreements
2 executed by GB and WFBC, as secured lenders, and Millard and AmeriCold,
3 respectively, as providers of warehousing and transportation services to the Debtor, and
4 consented to by the Debtor, as the owner of goods and inventory.

5 1.93 "Warehouseman Claims" means the claims of AmeriCold and Millard
6 against the Debtor relating to warehousing and transportation services provided by
7 Millard and AmeriCold, respectively, pursuant to the Warehouseman Agreements.

8 1.94 "WFBC" means Wells Fargo Bank, National Association, acting
9 through its Wells Fargo Business Credit operating division, the provider of the WFBC DIP
10 Credit Facilities to the Debtor and, subject to the satisfaction of the WFBC Exit Financing
11 Conditions Precedent, the provider of the WFBC Exit Financing Facilities to the
12 Reorganized Debtor.

13 1.95 "WFBC DIP Credit Facilities" means the WFBC Revolving DIP Credit
14 Facility and the WFBC Term DIP Credit Facility.

15 1.96 "WFBC Exit Financing Commitment Letter" means the agreement
16 between the Debtor and WFBC entered in connection with the closing of the WFBC DIP
17 Credit Facilities setting forth the terms and conditions of the WFBC Exit Financing Credit
18 Facilities. The WFBC Exit Financing Commitment Letter is attached as Exhibit 4 to the
19 Disclosure Statement.

20 1.97 "WFBC Exit Financing Conditions Precedent" are as follows:

21 1.97.1 The simultaneous closing of the GB Exit Credit
22 Facility to refinance the GB DIP Term Loan, which exit financing shall be on terms
23 acceptable to WFBC in its reasonable discretion;

24 1.97.2 Satisfaction of each of the terms and conditions set
25 forth in the WFBC Exit Financing Commitment Letter;

26 1.97.3 Filing of a UCC-1 financing statement on behalf of
27 WFBC at the office of the Delaware Secretary of State in connection with the
28 Reorganized Debtor's reincorporation in the State of Delaware;

1.97.4 The Reorganized Debtor shall have minimum availability on the funding date of the WFBC Revolving Exit Credit Facility of \$2,000,000 after (i) rolling over the outstanding line of credit balance from the WFBC Revolving DIP Credit Facility, (ii) reserving for all applicable availability reserves, (iii) reserving for any trade payables that are thirty (30) days past their due date in the ordinary course of business, (iv) paying all Court approved Administrative Claims including but not limited to any accrued and unpaid Administrative Claims or Priority Claims which are to be paid cash on the Effective Date or, if disputed, unliquidated, or contingent, when allowed, and (v) paying all Court approved professional fees;

1.97.5 Satisfaction of each of the terms and conditions set forth in the WFBC Proposal Letter (as amended by the WFBC Exit Financing Commitment Letter);

1.97.6 The negotiation, execution, and delivery of definitive documentation with respect to the WFBC Exit Financing Credit Facilities consistent with the WFBC Exit Financing Commitment Letter and the WFBC Proposal Letter and otherwise satisfactory to WFBC, in its sole discretion;

1.97.7 WFBC's timely receipt, at least thirty (30) days prior to the scheduled hearing on the confirmation of the Plan, and review and approval, in WFBC's sole discretion, of balance sheet, income statement, and cash flow statement projections for the Reorganized Debtor's operations for the initial twelve (12) months after the Effective Date of the Plan, prepared on a monthly basis and including an availability roll-forward. WFBC will utilize these projections to establish, in its discretion, the financial covenants for initial twelve months of the WFBC Exit Financing Credit Facility;

1.97.8 That there shall not have occurred, in the reasonable opinion of WFBC, any material adverse change in the business,

1 assets, liabilities (actual or contingent), operations, financial condition or prospects
2 of the Debtor; and

3 1.97.9 That (i) all written information, other than Projections
4 (as defined below), which has been or is hereafter made available to WFBC by the
5 Debtor or any of its representatives in connection with the transactions
6 contemplated hereby (the "Information") is and will be complete and correct in all
7 material respects and does not and will not contain any untrue statement of a
8 material fact or omit to state a material fact necessary to make the statements
9 contained therein not misleading in light of the circumstances in which the
10 Information was provided and (ii) all financial projections concerning the Debtor or
11 the Reorganized Debtor that have been or are hereafter made available to WFBC
12 by the Debtor or any of its representatives (the "Projections") have been prepared
13 in good faith based upon reasonable assumptions.

14 1.98 "WFBC Exit Financing Credit Facilities" means the WFBC Revolving
15 Exit Credit Facility and the WFBC Term Exit Credit Facility to be provided by WFBC to
16 the Reorganized Debtor upon the Effective Date of the Plan and subject to satisfaction of
17 the WFBC Exit Financing Conditions Precedent, including execution and delivery of the
18 Exit Financing Documentation. The terms of the WFBC Exit Credit Facilities shall be
19 substantially similar to the WFBC DIP Credit Facilities as modified by the WFBC Exit
20 Financing Commitment Letter.

21 1.99 "WFBC Proposal Letter" means the proposal letter dated August 10,
22 2005, with respect to the WFBC DIP Credit Facilities and the WFBC Exit Financing Credit
23 Facilities, attached as Exhibit 2 to the Disclosure Statement.

24 1.100 "WFBC Revolving DIP Credit Facility" means the secured revolving
25 credit facility extended to the Debtor by WFBC and approved by the Court in the Case
26 pursuant to a Final Order entered on November 16, 2005.

27 1.101 "WFBC Revolving Exit Credit Facility" means the secured revolving
28 credit facility to be provided by WFBC to the Reorganized Debtor upon the Effective Date

1 of the Plan and subject to the satisfaction of the WFBC Exit Financing Conditions
2 Precedent, including execution and delivery of the Exit Financing Documentation. The
3 terms of the WFBC Revolving Exit Credit Facility shall be substantially similar to the
4 WFBC Revolving DIP Credit Facility as modified by the WFBC Exit Financing
5 Commitment Letter.

6 1.102 "WFBC Term DIP Credit Facility" means the secured term loan
7 extended to the Debtor by WFBC and approved by the Court in the Case approved by
8 the Court pursuant to a Final Order entered on November 16, 2005.

9 1.103 "WFBC Term Exit Credit Facility" means the secured term loan to be
10 provided the WFBC to the Reorganized Debtor upon the Effective Date of the Plan and
11 subject to the satisfaction of the WFBC Exit Financing Conditions Precedent, including
12 execution and delivery of the Exit Financing Documentation. The terms of the WFBC
13 Term Exit Credit Facility shall be substantially similar to the WFBC Term DIP Credit
14 Facility as modified by the WFBC Exit Financing Commitment Letter.

15 II.

16 CONSTRUCTION

17 2.1 Where not inconsistent or in conflict with the provisions of the Plan,
18 the words and phrases used in the Plan shall have the meanings provided in the Code or
19 the Bankruptcy Rules.

20 2.2 Section captions used in the Plan are for convenience only, and shall
21 not affect the construction of the Plan.

22 2.3 The first letters of terms defined in the Plan are capitalized.

23 III.

24 CERTAIN GENERAL TERMS AND CONDITIONS

25 The following general terms and conditions apply to this Plan:

26 3.1 To the extent any Claim or portion of any Claim of a Creditor is a
27 Disputed Claim, or is otherwise contingent or unliquidated, or has not been allowed by
28 the Court, the Disbursing Agent may either reserve and segregate such Distribution

1 under the Plan as is sufficient to provide for each of such Claims under the Plan, ask the
2 Court to determine an appropriate reserve, or ask the Court to estimate for purposes of
3 allowance any contingent or unliquidated Claim which would otherwise delay the
4 administration of the Case.

5 3.2 Pursuant to section 1123 of the Code, Section V of the Plan
6 designates six (6) classes of Claims and Equity Interests. As set forth below,
7 Administrative Claims, the Claims of WFBC and GB in connection with the Post-Petition
8 Credit Facilities, Warehouseman Claims under the Warehouseman Agreements
9 approved by the Court, and Tax Claims of the kind specified in sections 507(a)(1) and
10 507(a)(8) of the Code, have not been classified and are excluded from the classes set
11 forth in Section V of the Plan, in accordance with section 1123(a)(1) of the Code. A
12 Claim shall be deemed classified in a particular Class only to the extent that the Claim
13 qualifies within the description of that Class and shall be deemed classified in a different
14 Class to the extent that any remainder of the Claim qualifies within the description of such
15 different Class. A Claim is in a particular Class only to the extent that the Claim is an
16 Allowed Claim in that Class. Multiple proofs of claim filed by a Creditor which qualify for
17 inclusion within the same Class shall be aggregated and, if allowed, shall constitute a
18 single Allowed Claim.

19
20 IV.

21 **ADMINISTRATIVE EXPENSES AND UNCLASSIFIED CLAIMS**

22 4.1 Administrative Claims in General. Except as otherwise
23 specifically set forth below, the holders of Allowed Administrative Claims entitled to
24 priority under section 507(a)(1) of the Code, entities entitled to payments under section
25 546(c) or 553 of the Code, and entities entitled to payment of administrative expenses
26 pursuant to sections 503 and 507(a) of the Code shall receive on account of such
27 Allowed Claims or administrative expenses cash in the amount of such Allowed Claims or
28

1 administrative expenses on or before the Effective Date of the Plan or as soon thereafter
2 as is practicable.

3 4.2 Claims of Professionals Employed in the Case or Otherwise
4 Asserted Under Sections 503(b)(2)-(6) of the Code. Notwithstanding the foregoing,
5 professionals employed at the expense of the Estate, and entities, if any, entitled to an
6 allowance of fees and expenses from the Estate pursuant to sections 503(b)(2) through
7 (6) of the Code, shall receive cash in the amount awarded to such professionals and
8 entities as soon as practicable after an order is entered by the Court approving such
9 award pursuant to sections 330 or 503(b)(2) through (6) of the Code, unless any such
10 professional or other entity consents prior to Confirmation to other treatment.

11 4.3 Tax Claims. Holders of Allowed Tax Claims, if any, entitled to
12 priority under section 507(a)(8) of the Code will be paid in full on account of such Claims
13 within 30 days following the Effective Date. Payment of Allowed Tax Claims shall include
14 payment of interest at the rate applicable under nonbankruptcy law to such Claims.

15 4.4 WFBC. On the Effective Date and subject to satisfaction of
16 the WFBC Exit Financing Conditions Precedent, including the execution and delivery of
17 the Exit Financing Documentation, the WFBC DIP Credit Facilities shall be replaced by
18 the WFBC Exit Financing Credit Facilities. The WFBC Exit Financing Credit Facilities
19 shall have a Maturity Date of November 22, 2008. The financial terms and obligations of
20 the WFBC DIP Credit Facilities and WFBC's Liens shall remain in full force and effect
21 and shall continue unaltered following the Effective Date, except as set forth in the Exit
22 Financing Documentation or other agreements between the Debtor and WFBC approved
23 pursuant to the Confirmation Order.

24 4.5 GB. On the Effective Date and subject to the satisfaction of
25 the GB Exit Financing Conditions Precedent, including the execution and delivery of the
26 Exit Financing Documentation, the GB DIP Term Loan shall be replaced by the GB Exit
27 Credit Facility. The GB Exit Credit Facility shall have a Maturity Date of November 22,
28 2008. The financial terms and obligations of the GB DIP Term Loan and GB's Liens shall

1 remain in full force and effect and shall continue unaltered following the Effective Date,
2 except as set forth in the Exit Financing Documentation or other agreements between the
3 Debtor and GB approved pursuant to the Confirmation Order.

4 4.6 Warehouseman Claims. The Warehouseman Claims shall be
5 treated under the Plan in accordance with the Warehouseman Agreements. The rights
6 and obligations under the Warehouseman Agreements shall remain in full force and
7 effect following Confirmation of the Plan.

8 V.

9 **DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS**

10 Claims and Equity Interests are classified under the Plan as follows:

11 5.1 Class 1 (Priority Claims). All Allowed Priority Claims.

12 5.2 Class 2 (General Unsecured Claims). Allowed General Unsecured
13 Claims.

14 5.3 Class 3 (Convertible Note). Allowed Claim pursuant to the
15 Convertible Note.

16 5.4 Class 4 (Preferred Stock). Preferred Stock of the Debtor.

17 5.5 Class 5 (Common Stock). Common Stock of the Debtor.

18 5.6 Class 6 (Equity Interest Related Claims). All Equity Interest Related
19 Claims.

20 VI.

21 **CLASS (NONVOTING) NOT IMPAIRED UNDER THE PLAN**

22 Class 1 is not impaired under the Plan and shall be treated as follows:

23 6.1 Class 1 (Priority Claims). The holders of Allowed Claims in Class 1
24 will be paid in full in cash on the Effective Date, or as soon thereafter as is
25 administratively practicable, unless otherwise ordered by the Court.
26
27
28

VII.

TREATMENT OF (VOTING) CLASSES IMPAIRED UNDER THE PLAN

Classes 2 (General Unsecured Creditors) and 3 (Convertible Note) are (i) Impaired under the Plan, (ii) entitled to vote on the Plan, and (iii) shall be treated in accordance with the terms stated below. Impaired Classes 2 and 3 will be treated as follows:

7.1 Class 2 (General Unsecured Creditors). On account of their Allowed Claims and in full satisfaction thereof, the holders of Allowed General Unsecured Claims shall receive payment in the full amount of their Allowed Claims, in three (3) installments, (i) six (6) months (the "Initial Payment"), (ii) twelve (12) months (the "Second Payment"), and (iii) eighteen (18) months (the "Final Payment") following the Effective Date. The Initial Payment and the Second Payment shall each be in the amount of twenty five percent (25%) of the Allowed Claim of the member of Class 2. The Final Payment shall be in the amount of fifty percent (50%) of the Allowed Claim of the member of Class 2. Interest accruing after the Petition Date will not be paid to the members of Class 2.

7.2 Class 3 (Convertible Note). On account of its Allowed Claim and in full satisfaction thereof, the holder of the Convertible Note shall receive, as of the Effective Date of the Plan, New Equity Interests in the Reorganized Debtor. The New Equity to be received by the holder of the Convertible Note shall constitute 100% of the New Preferred Stock issued under the Plan and 83% of the New Common Stock issued or reserved for issuance under the Plan. The nature and rights of the New Equity Interests are governed by the Certificate of Incorporation, Bylaws and Shareholder Agreement.

VIII.

TREATMENT OF (NONVOTING) CLASS IMPAIRED UNDER THE PLAN

8.1 Class 4 (Preferred Stock). All Preferred Stock in the Debtor shall be cancelled, annulled and extinguished as of the Effective Date of the Plan. The holders of

1 Preferred Stock in the Debtor shall not receive or retain anything under the Plan on
2 account of such Equity Interests.

3 8.2 Class 5 (Common Stock). All Common Stock in the Debtor shall be
4 cancelled, annulled and extinguished as of the Effective Date of the Plan. The holders of
5 Common Stock in the Debtor shall not receive or retain anything under the Plan on
6 account of such Equity Interests.

7 8.3 Class 6 (Equity Interest Related Claims). Each holder of an Equity
8 Interest Related Claim shall not receive or retain anything under the Plan on account of
9 such Claims.

10 IX.

11 ACCEPTANCE OR REJECTION OF THE PLAN

12 9.1 Impaired Classes of Claims Entitled to Vote. Classes 2 (General
13 Unsecured Creditors) and 3 (Convertible Note) are Impaired and shall be entitled to vote
14 to accept or reject the Plan.

15 9.2 Class Deemed to Accept the Plan. Class 1 is Unimpaired. Pursuant
16 to section 1126(f) of the Code, Class 1 is conclusively presumed to have accepted the
17 Plan. The votes of the holders of Claims in Class 1 will therefore not be solicited.

18 9.3 Classes Deemed to Reject the Plan. Holders of Equity Interests and
19 Equity Interest Related Claims in Class 4 (Preferred Stock), Class 5 (Common Stock)
20 and Class 6 (Equity Interest Related Claims) shall not receive any Distribution or retain
21 any property or rights under the Plan on account of their Equity Interests. Pursuant to
22 section 1126(g) of the Code, Classes 4, 5, and 6 are Impaired and are conclusively
23 presumed to have rejected the Plan. The votes of Equity Interest Holders and the
24 holders of Equity Interest Related Claims in Classes 4, 5 and 6, therefore will not be
25 solicited.

26 9.4 Nonconsensual Confirmation (Cramdown). In the event that any
27 Impaired Class shall fail to accept the Plan in accordance with section 1129(a) of the
28 Code, the Debtor shall request that the Court confirm the Plan in accordance with section

1 1129(b) of the Code. With respect to Classes 4, 5 and 6, the Debtor requests
2 Cramdown, and the Cramdown requirements are met for Classes 4, 5, and 6 since there
3 are no holders of junior interests who receive or retain anything under the Plan.

4 X.

5 **MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN**

6 10.1 Funding the Plan. As of the Effective Date, the Reorganized Debtor
7 shall use Exit Financing and operating revenues to (i) pay in full obligations under the
8 Post-Petition Credit Facilities, (ii) fund its operations and working capital requirements,
9 (iii) pay Allowed Administrative Claims, and (iv) meet other obligations under the Plan.

10 10.2 Exit Financing. Upon the Effective Date, and provided that the
11 Debtor has satisfied all of the GB Exit Financing Conditions Precedent and the WFBC
12 Exit Financing Conditions Precedent, including the execution and delivery of the Exit
13 Financing Documentation, the Post-Petition Credit Facilities shall be paid in full with the
14 proceeds of the Exit Financing. The Exit Financing shall have a Maturity Date of
15 November 22, 2008. Otherwise, the Liens of WFBC and GB and the financial terms and
16 obligations of the WFBC DIP Credit Facilities and the GB DIP Term Loan shall remain in
17 full force and effect and shall continue unaltered in connection with the Exit Financing
18 following the Effective Date, except as set forth in the Exit Financing Documentation or
19 other agreements between the Debtor and the Secured Lenders approved pursuant to
20 the Confirmation Order.

21 10.3 Cancellation of Equity Interests. As of the Confirmation Date, the
22 Equity Interests (Preferred Stock and Common Stock) in the Debtor shall be cancelled
23 and all rights held in connection with the Equity Interests shall be extinguished.

24 10.4 Issuance of New Equity Interests in the Reorganized Debtor. As of
25 the Effective Date, the New Preferred Stock and the New Common Stock will be issued
26 by the Reorganized Debtor, and the Certificate of Incorporation, Bylaws, Shareholder
27 Agreement, Employment Agreements and Consulting Agreement will become effective.
28

1 10.5 Issuance of New Equity Interests in the Reorganized Debtor to the
2 Holder of the Convertible Note. As of the Effective Date, in connection with the
3 implementation of the Plan, the Reorganized Debtor will issue to the holder of the
4 Convertible Note 100% of the New Preferred Stock issued under the Plan and New
5 Common Stock amounting to 83% of the New Common Stock issued or reserved for
6 issuance under the Plan.

7 10.6 Management Payment and Management Equity Plan.

8 10.6.1 Condition of Continued Employment. To retain and
9 incentivize Key Management and, as a condition of continued employment with the
10 Reorganized Debtor, the members of Key Management (i) shall be subject to the
11 Employment Agreements, which supercede and replace all prior agreements between
12 them and the Debtor concerning employment, severance rights, retention payments and
13 related rights and, as of the Effective Date, the Estate and the Reorganized Debtor shall
14 have no liability or obligation under any such prior agreements, and (ii) Key Management
15 will be entitled to be participate in the Management Equity Plan as set forth below in
16 Section 10.6.3.

17 10.6.2 Payments. In connection with the implementation of the
18 Management Equity Plan and in accordance with the Employment Agreements, on the
19 Effective Date, the Reorganized Debtor shall, subject to any limitations set forth in the
20 Exit Financing, pay to each of the following members of Key Management the following
21 cash amounts: (1) Scott C. Wallace (the Reorganized Debtor's President and Chief
22 Executive Officer) will receive \$286,000; and (2) Robert Dixon (the Reorganized Debtor's
23 Vice President, Sales) will receive \$177,000. In addition, and also subject to any
24 limitations set forth in the Exit Financing with respect to payments to Key Management,
25 Robert T. Trebing, Jr., the Debtor's Chief Financial Officer, shall receive a cash payment
26 on the Effective Date in the amount of the CFO Payment Calculation.

27 10.6.3 New Common Stock. In connection with the implementation
28 of the Management Equity Plan and in accordance with the Employment Agreements, on

1 the Effective Date, the Reorganized Debtor shall provide Key Management with the
2 following New Common Stock in the Reorganized Debtor: (1) Scott C. Wallace (the
3 Reorganized Debtor's President and Chief Executive Officer) will receive New Common
4 Stock amounting to 6.50% of the New Common Stock issued or reserved for issuance
5 under the Plan; (2) Robert Dixon (the Reorganized Debtor's Vice President, Sales) will
6 receive New Common Stock amounting to 1.75% of the New Common Stock issued or
7 reserved for issuance under the Plan; (3) Melanie Flaherty (the Reorganized Debtor's
8 Director of Marketing) will receive New Common Stock amounting to 1.00% of the New
9 Common Stock issued or reserved for issuance under the Plan; (4) Richard D. Werblin
10 (the Reorganized Debtor's Director of Finance) will receive 1.00% of the New Common
11 Stock issued or reserved for issuance under the Plan; and (5) David W. Samuelson (the
12 Reorganized Debtor's Director of Operations) will receive 1.00% of the New Common
13 Stock issued or reserved for issuance under the Plan. In addition, the Reorganized
14 Debtor will reserve New Common Stock, as of the Effective Date, for issuance following
15 the Effective Date, to other potential future, additional members of Key Management
16 under the Management Equity Plan, who may be retained on behalf of the Reorganized
17 Debtor prior to or following the Effective Date, amounting to 3.75% of the New Common
18 Stock issued or reserved for issuance under the Plan. All New Common Stock issued to
19 members of Key Management is subject to the terms and conditions of the New
20 Corporate Documents, including the Shareholder Agreement.

21 10.7 New Corporate Documents. Upon the Effective Date, the New
22 Corporate Documents shall be deemed adopted by the Reorganized Debtor's Board of
23 Directors and shall have full force and effect following the Effective Date. As of the
24 Effective Date, the Reorganized Debtor shall be Reincorporated under the laws of the
25 State of Delaware and shall have the corporate name Wholesome & Hearty Foods
26 Company. Upon the Effective Date, the Certificate of Incorporation shall, among other
27 things, prohibit the issuance of nonvoting equity securities and provide for the distribution
28 of voting power between the New Common Stock and the New Preferred Stock. The

terms of the Certificate of Incorporation shall include, without limitation, that the holders of shares of New Preferred Stock shall vote as a separate class on any and all matters that (1) relate to the issuance of any shares of preferred stock, which preferred stock may provide for liquidation preferences or other rights pari passu or senior to the rights of holders of New Preferred Stock, or (2) might otherwise adversely affect the rights of the holders of the New Preferred Stock, as a class.

10.8 Consulting Agreement with and Equity Grant to Chairman of Reorganized Debtor. As of the Effective Date, the Consulting Agreement between the Reorganized Debtor and Robert E. Fowler, III, shall become effective. Under the Consulting Agreement, Mr. Fowler shall provide financial advisory services to the Reorganized Debtor. Pursuant to the Consulting Agreement, commencing on the Effective Date, a \$20,000 per month consulting fee shall be payable to Mr. Fowler by the Reorganized Debtor subject to any limitations on such payment(s) under the Exit Financing. The Consulting Agreement is included in the Appendix of New Corporate Documents filed with the Court in connection with the Plan. Additionally, Mr. Fowler will receive New Common Stock as of the Effective Date amounting to 2.00% of the New Common Stock issued or reserved for issuance under the Plan.

10.9 Disbursements. The Reorganized Debtor shall act as Disbursing Agent and shall make all Distributions in accordance with the Plan. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

10.10 Reserve for Disputed Claims.

10.10.1 On and after the Effective Date, as of the date that a Distribution is otherwise to have been made under the Plan to the holder of a Disputed Claim (if such Claim constituted an Allowed Claim), such Distribution(s) shall not be distributed but shall be held and reserved by the Reorganized Debtor in a single

1 segregated account (the "Disputed Claims Reserve") for the benefit of the holder(s) of the
2 Disputed Claim(s) entitled thereto under the Plan. Except to the extent that the Court
3 shall have estimated under section 502(c) of the Code or otherwise determined that a
4 good and sufficient reserve for Disputed Claims is less than the full amount thereof, there
5 will be deposited into the Disputed Claims Reserve an amount of cash which would have
6 been distributed on account of all Disputed Claims if all Disputed Claims were allowed in
7 the full amount claimed by the holders thereof.

8 10.10.2 At such time as a Disputed Claim becomes an Allowed
9 Claim, the Distribution which would have been disbursed had the Disputed Claim been
10 an Allowed Claim at the time of any prior Distribution(s) under the Plan shall be released
11 from the Disputed Claims Reserve and delivered to the Disbursing Agent for delivery to
12 the holder of such Allowed Claim within thirty (30) days. At such time as all Disputed
13 Claims have been finally determined, the balance of the cash not theretofore distributed
14 shall be returned to the Reorganized Debtor.

15 10.11 Unclaimed Distributions.

16 10.11.1 The Reorganized Debtor shall deposit any Unclaimed
17 Property in an Unclaimed Property Reserve to be held in trust for the benefit of the
18 holders of Allowed Claims entitled thereto under the terms of the Plan. For a period of
19 180 days following the date of distribution, Unclaimed Property, including any principal,
20 interest and dividends, in cash or in kind, as may have been paid on account of any such
21 Unclaimed Property shall be held in the Unclaimed Property Reserve solely for the
22 benefit of the holders of Allowed Claims which have failed to claim such property. Until
23 the expiration of 180 days following the distribution date, Unclaimed Property due to the
24 holder of an Allowed Claim shall be released from the Unclaimed Property Reserve and
25 delivered to such holder upon presentation of proper proof by such holder of its
26 entitlement thereto.

27 10.11.2 At the end of 180 days following the distribution date, the
28 holders of Allowed Claims theretofore entitled to Unclaimed Property shall cease to be

1 entitled thereto, and the Unclaimed Property shall then become property of the
2 Reorganized Debtor, unless the amount of the Unclaimed Property Reserve equals or
3 exceeds \$100,000 in which case the Unclaimed Property will be distributed pro rata to
4 the holders of Allowed Claims except for the holders of Allowed Claims which had failed
5 to claim such property.

6 10.12 Revesting of Property of Estate. On the Confirmation Date, the
7 Debtor shall be revested with all property that was formerly Property of the Estate
8 (including, without limitation, all claims and rights against third parties belonging to the
9 Debtor or the Estate) free and clear of all Liens, Claims and interests, except for any and
10 all security interests and Liens granted to WFBC and GB pursuant to the DIP Financing
11 Order and any other permitted Liens under the Post-Petition Credit Facilities, and except
12 for obligations arising under and specifically set forth in the Plan.

13 10.13 Post-Confirmation Operations. Following the Confirmation Date, the
14 Reorganized Debtor may operate and engage in its business free of any restrictions of
15 the Code, the Bankruptcy Rules, the Court, or the Office of the United States Trustee,
16 except if and as specifically set forth in the Plan.

17 10.14 Execution and Delivery of Documents. The Debtor and the
18 Reorganized Debtor (acting with the approval of the Reorganized Debtor's Board of
19 Directors) are authorized to execute and deliver documents and instruments as are
20 necessary or appropriate to promote and implement Consummation of the Plan or to
21 carry out the purposes of the Plan.

22 10.15 Objections to Claims. Following the Confirmation Date, only the
23 Debtor or the Reorganized Debtor may object to the allowance of any Claim against the
24 Debtor. Any objection to a Claim shall be filed on or before ninety (90) days after the
25 Effective Date. This time period can be extended by the Court upon request of the
26 Debtor or the Reorganized Debtor.

27 10.16 Deadline For Filing Claims. The last day for filing proofs of claim
28 against the Debtor is February 16, 2005, the Bar Date fixed by the Court prior to

Confirmation of the Plan, except for Administrative Claims and certain claims relating to rejected leases and except as otherwise set forth in the Court's Bar Date order entered in the Case on November 22, 2005.

10.17 Deadline for Filing Certain Administrative Claims. The deadline for filing Administrative Claims asserted pursuant to section 503(b) of the Code, other than Claims for compensation and reimbursement of expenses of professional persons employed pursuant to Court order in the Case, shall be thirty (30) days following the Confirmation Date. If said date falls on a weekend or holiday, the deadline shall be the last Business Day prior thereto.

10.18 Retention and Enforcement of Claims. Pursuant to section 1123(b)(3) of the Code, the Reorganized Debtor may maintain and enforce any claims or rights against third parties held by the Debtor or the Estate, except that any claims under Sections 547 or 548 of the Code shall be waived and released as of the Effective Date.

10.19 1146(c) Exemption. Pursuant to section 1146(c) of the Code, any transfers from the Debtor or the Reorganized Debtor to any other Person pursuant to the Plan, or the issuance, transfer or exchange of a security under the Plan, or the execution, delivery or recording of an instrument of transfer under the Plan, shall not be subject to any law imposing a stamp tax, recording tax, transfer tax, or similar tax.

10.20 Exemption From Securities Laws. The Debtor's issuance of securities representing New Equity Interests pursuant to the Plan will not be subject to any federal, state, or local securities law.

10.20.1 Exemption Under Section 1145 of the Code With Respect to New Equity Interests Issued to Annex Holdings. The issuance of securities pursuant to the Plan to Annex Holdings will not be subject to any federal, state, or local securities law in accordance with and reliance upon Section 1145(a) of the Code because the issuance of New Equity Interests to Annex Holdings is made pursuant to the Plan in exchange for Annex Holdings' Claim against the Debtor, and Annex Holdings is not an "underwriter" within the meaning as set forth under Section 1145(b) of the Code.

1 10.20.2 Private Offering Exemptions Under Securities Act with
2 Respect to New Equity Interests Issued in Connection with Management Equity Plan.

3 The issuance of securities pursuant to the Plan comprising New Equity Interests to Key
4 Management in connection with the Management Equity Plan, as well as the issuance of
5 New Common Stock to Robert E. Fowler, III, under the Plan, will not be subject to any
6 federal, state or local securities law in reliance upon application of the applicable
7 exemption from registration under Regulation D under the Securities Act (Rules 504
8 through 506 to the Securities Act).

9 10.21 Court and United States Trustee Fees. Prior to the Effective Date,
10 all fees due from the Debtor to the Clerk of the Court and all fees due from the Debtor to
11 the United States Trustee shall be paid in full.

12 10.22 Withholding and Reporting Requirements. In connection with the
13 Plan and all instruments issued in connection therewith and with respect to all
14 Distributions pursuant to the Plan, the Reorganized Debtor shall comply with all
15 withholding and reporting requirements imposed by any federal, state, local or foreign
16 taxing authority. Payment amounts set forth in the Plan are gross amounts which shall
17 be subject to withholding for federal, state and local taxes and usual and customary
18 payroll deductions (if applicable).

19 10.23 Implementation Reports and Closing Case. One hundred twenty
20 (120) days following the Confirmation Date, the Reorganized Debtor shall file an
21 implementation report with the Clerk of the Court setting forth the status of
22 implementation of the Plan. The initial report shall be served on the United States
23 trustee, the Debtor's 20 largest unsecured creditors, WFBC, GB, Millard, AmeriCold, and
24 any other parties who have requested special notice. Further reports shall be filed every
25 120 days thereafter through the closing of the Case and served on the same entities,
26 unless otherwise ordered by the Court. Upon Substantial Consummation of the Plan or
27 as soon thereafter as all matters in the Case have been resolved, the Reorganized
28

1 Debtor will file a motion with the Clerk of the Court requesting the entry of a final decree
2 closing the Case.

3 XI.

4 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

5 Executory contracts and unexpired leases that are not otherwise assumed
6 or rejected pursuant to a motion filed with the Court prior to the Confirmation Date, shall
7 be assumed pursuant to the Plan as of the Effective Date and the Cure Amount with
8 respect to such executory contracts and unexpired leases shall be paid by the
9 Reorganized Debtor as soon as practicable following the Effective Date.

10 XII.

11 **POST-CONFIRMATION EMPLOYMENT AND**
12 **COMPENSATION OF PROFESSIONALS**

13 After the Confirmation Date, the Debtor and the Reorganized Debtor may
14 employ, without notice, hearing or order of the Court, such attorneys, accountants and
15 other professionals as it may desire to render services on such terms as it deems
16 reasonable. With respect to services rendered by professional persons employed by the
17 Debtor or the Reorganized Debtor after the Confirmation Date, the Reorganized Debtor
18 shall be authorized to pay for such services, related costs and expenses without notice,
19 hearing or order of the Court; provided however, that with respect to fees, costs and
20 expenses of such professional persons for services rendered after the Confirmation Date
21 in or in connection with the Case, or in connection with the Plan and incident to the Case,
22 in the event the Reorganized Debtor disputes the reasonableness of any such fees, costs
23 or expenses, the Reorganized Debtor shall pay such professional person only the
24 undisputed amount, if any, and the Reorganized Debtor or the professional may file an
25 application with the Court to determine the reasonableness of the fees, costs or
26 expenses which are in dispute.

XIII.

DISCHARGE

13.1 Discharge of Debts. Pursuant to section 1141(d)(1) of the Code, Confirmation of the Plan will discharge the Debtor from any Debt that arose prior to the Confirmation Date, and any Debt of any kind specified in section 502(g), 502(h), or 502(i) of the Code, whether or not: (1) a proof of Claim based on such Debt is filed or deemed filed under section 501 of the Code; (2) such Claim is allowed under section 502 of the Code; or (3) the holder of such Claim accepts the Plan. Notwithstanding the foregoing, obligations of the Debtor owing to WFBC and GB and obligations of the Debtor pursuant to the Warehouseman Agreements shall not be discharged by Confirmation of the Plan.

13.2 Judgments Obtained on Discharged Debts are Void. Pursuant to section 524(a)(1) of the Code, the Debtor's discharge pursuant to Confirmation of the Plan under section 1141 of the Code, voids any judgments at any time obtained, to the extent that such judgment is a determination of the personal liability of the Debtor with respect to any Debt discharged, whether or not discharge of such Debt is waived.

13.3 Discharge Injunction. Pursuant to section 524 of the Code, the Debtor's discharge pursuant to the Plan under section 1141 of the Code operates as an injunction against the commencement or a continuation of an action, the employment of process, or an act, to collect, recover, or offset any discharged Debt as a personal liability of the Debtor, whether or not discharge of such Debt is waived.

XIV.

MODIFICATION OF PLAN

14.1 The Plan may be modified upon motion of the Debtor or the Reorganized Debtor, or corrected by the Debtor or the Reorganized Debtor prior to the Effective Date, without notice and a hearing and without additional disclosure pursuant to section 1125 of the Code provided that, after notice to the United States Trustee, counsel for the Committee, and all parties who have filed and served a request for special notice

1 in the Case, the Court finds that such modification does not materially or adversely affect
2 any Creditor or any Class of Creditors.

3 14.2 At any time prior to Consummation, the Debtor or the Reorganized
4 Debtor may seek Court authorization to remedy any defect or omission, reconcile any
5 inconsistencies in the Plan or in the Confirmation Order, or effect such other changes,
6 modifications, or amendments as may be necessary to carry out the purposes and intent
7 of the Plan.

8 XV.

9 GENERAL PROVISIONS

10 15.1 Jurisdiction. The Court will retain jurisdiction until Consummation of
11 the Plan and the entry of a final decree closing the Case. The Court shall further retain
12 jurisdiction under the Plan for all purposes consistent with the Plan and the Code, which
13 purposes include, but are not limited to:

14 15.1.1 The classification or allowance of a Claim of any Creditor
15 and the reexamination of Claims which have been allowed for purposes of voting and the
16 determination of such objections as may be filed against Creditors' Claims.

17 15.1.2 The determination of all questions and disputes regarding
18 title to the assets of the Estate, and the determination of all causes of action,
19 controversies, disputes or conflicts, including the right to participate in any Distribution
20 from the Estate, whether or not subject to an action pending as of the Effective Date,
21 between the Debtor and/or the Reorganized Debtor and any other party, including, but
22 not limited to, any right of the Debtor and/or the Reorganized Debtor to recover assets
23 pursuant to the provisions of the Code.

24 15.1.3 The correction of any defect, curing of any omission, or the
25 reconciliation of any inconsistency in the Plan or in the Order of Confirmation, as may be
26 necessary to carry out the purposes and intent of the Plan.

1 15.1.4 The determination of the allowability, validity and priority of
2 Claims against the Debtor or the Estate, whether such Claims are asserted before or
3 after the Confirmation Date.

4 15.1.5 The modification or amendment of the Plan after
5 Confirmation to the extent permitted by and pursuant to the requirements of the
6 Bankruptcy Rules and the Code.

7 15.1.6 The enforcement and interpretation of the terms and
8 provisions of the Plan.

9 15.1.7 The entry of any order concluding or terminating the Case.

10 15.1.8 The granting of extensions of any deadlines set herein.

11 15.1.9 The administration of the Case, and implementation and
12 Consummation of the Plan.

13 15.2 Interpretation. To the extent that the terms of the Plan are
14 inconsistent with the terms of any agreement or instrument concerning any Claim or
15 Equity Interest, or any other matter, the terms of the Plan shall control.

16 15.3 Binding Effect. Upon Confirmation of the Plan, the Debtor, the
17 Reorganized Debtor, and all Creditors and Equity Interest Holders, whether or not the
18 Claim of such Creditor is Impaired under the Plan and whether or not such Creditor or
19 Equity Interest Holder has accepted the Plan, shall be bound by the provisions of the
20 Plan pursuant to section 1141(a) of the Code.

21 15.4 Other Documents and Actions. The Debtor and/or the Reorganized
22 Debtor, following approval of its board of directors, may execute such other documents
23 and take such other actions as may be necessary or appropriate to effectuate the
24 transactions contemplated under this Plan.

25 15.5 Post-Effective Date Notice. From and after the Effective Date, any
26 person or entity who desires notice of any pleading or document filed in the Case, or of
27 any hearing in the Court, or of any matter as to which the Code requires notice to be
28 provided, shall file a request for post-confirmation notice and shall serve the request on

1 bankruptcy counsel for the Debtor at the address set forth in the upper left corner of the
2 cover page of the Plan.

3 15.6 Termination of Committee. As of the Effective Date, the Committee
4 shall terminate and shall have no further rights, responsibilities, powers, duties or
5 authority.

6 15.7 Successors and Assigns. The rights, benefits, and obligations of any
7 Person named or referred to in the Plan shall be binding on, and shall inure to the benefit
8 of, the heirs, executors, administrators, successors, and assigns of such Person.

9 15.8 Applicable Law. The Plan is to be governed by and construed under
10 the Code and the laws of the State of California as they may be applicable.

11 15.9 Implementation Orders. At any time, the Court may make such
12 orders or give such direction as may be appropriate under section 1142 of the Code.

13 DATED: 1-26, 2006

GARDENBURGER, INC.
Debtor in Possession

14 By: Scott Wallace
15 Scott Wallace,
16 President, CEO and
Chairman of the Board

17 PRESENTED BY:

18 SulmeyerKupetz
A Professional Corporation

19 By: David S. Kupetz

20 David S. Kupetz
21 Bankruptcy Counsel for Gardenburger, Inc.
Debtor in Possession

SulmeyerKupetz, A Professional Corporation
323 SOUTH HOPE STREET, THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1426
TEL 213 595 2311 • FAX 213 529 4523

NOTE TO USERS OF THIS FORM:

Physically attach this form as the last page of the proposed ~~Chapter 11~~ or Judgment.
Do not file this form as the separate document.

| | |
|---|----------------------------|
| In re GARDENBURGER, INC., an Oregon corporation, dba GARDENBURGER AUTHENTIC FOODS COMPANY | CHAPTER 11 |
| Debtor. | CASE NUMBER SA 05-19539-JB |

**NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING**

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified, pursuant to local Bankruptcy Rule 9021-1(a)(1)(E), that a judgment or order entitled
(specify):

ORDER CONFIRMING DEBTOR'S PLAN OF REORGANIZATION

was entered on (specify date):

MAR 15 2006

2. I hereby certify that I mailed a copy of this notice and a true copy of the order or judgment to the persons and
entities on the attached service list on (specify date):

MAR 15 2006

Dated:

MAR 15 2006

JON D. CERETTO
Clerk of the Bankruptcy Court

By:


Deputy Clerk

NOTICE OF ENTRY - SERVICE LIST
GARDENBURGER, INC.,
CASE NO. SA 05-19539-JB

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